



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUL 23 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
NEPA Practitioners

From: Deputy Secretary 

Subject: Reporting Costs Associated with Developing Environmental Impact Statements

Purpose

This memorandum provides guidance to yield greater transparency by capturing the estimated costs to develop and produce EIS documents prepared by the Department's Bureaus and Offices when serving as the lead Agency.¹ A standard description of cost estimates will assist Bureaus in determining how to appropriately focus resources, diagnose problems, find opportunities to improve project planning, and be used to meet the Agency Performance Accountability System requirements established under Executive Order 13807.

Scope

This memorandum applies to all proposed actions for which the Department, including any of its Bureaus or Offices, is the lead Agency and has published a Notice of Intent (NOI) to prepare an EIS. For purposes of this memorandum, "environmental review costs" include the lead Agency's personnel, contractors, or other direct costs associated with project authorization and NEPA compliance, but do not include the estimated costs incurred by cooperating Agencies.² "Environmental review costs" also include the lead Agency's costs associated with complying with laws other than NEPA, such as the Endangered Species Act or the National Historic Preservation Act, that are necessary for the lead Agency to authorize the proposed action evaluated by the EIS.

Directive

Upon the effective date of this memorandum, all Bureau or Office-led Draft, Supplemental, and Final EISs shall display the estimated environmental review costs associated with developing and producing the EIS, to that point in the NEPA process, on the EIS cover page according to the following guidance:

¹ 40 CFR 1508.16.

² 40 CFR 1501.6.

I. Cost Tracking and Reporting Guidance

1. For ongoing proposed actions, lead Bureaus or Offices shall make a good faith estimate of past incurred environmental review costs;
2. To facilitate an estimate, each lead Bureau or Office shall begin tracking environmental review costs once it has determined that it will prepare an EIS to evaluate a proposed action;³ and
3. Each lead Bureau or Office shall continue to track environmental review costs until it issues a final decision on the proposed action evaluated by the EIS.

II. Developing a Cost Estimate

1. Lead Bureaus and Offices shall track the costs of their full-time equivalent (FTE) personnel hours, contractor costs, and other direct costs related to the proposed action and associated environmental review.
2. Lead Bureau and Office FTE hours should include an estimate of the cost of time spent by:
 - a. the project management team responsible for the proposed action;
 - b. subject matter experts who participate in a portion of the review;
 - c. managers or supervisors who have delegated responsibility over or direct oversight of the proposed action and EIS; and
 - d. attorneys who review documents pertaining to the proposed action.
3. Contractor costs should include:
 - a. the direct costs associated with a lead Bureau or Office employing a contractor to develop an EIS or other environmental reviews;
 - b. any additional contractor costs; and
 - c. any additional third-party costs that were necessary to complete the EIS or other environmental reviews that were not directly billed to the contractor.

III. Calculating Time and Costs

1. Lead Bureaus or Offices shall calculate a proposed action's environmental review costs by totaling the lead Agency's direct and contractor costs and rounding that number to the nearest thousand-dollar figure.⁴ Department financial and administrative systems

³ Costs include those incurred pre-application and pre-Notice of Intent (NOI) to assist the applicant in submitting a complete application and to assist in issuing an effective NOI and EIS.

⁴ For example, if environmental review costs for a Draft EIS total \$456,678.09, then the number displayed prominently on the cover page of the Draft EIS should be \$457,000.

may be used to track such costs.⁵

2. Lead Bureaus and Offices may calculate **FTE costs** by estimating, or by reporting tracking system data, the amount of applicable staff time spent on an environmental review and multiply those hours by the Bureau or Office's average hourly rate.

$$\text{FTE Costs} = \text{Total estimated FTE hours} \times \text{Average FTE Hourly Rate}$$

3. Lead Bureau, Office, and applicant-funded **contractor costs** of producing or reviewing an EIS and other environmental reviews should be totaled and added to Bureau or Office FTE costs as described above.

$$\text{Contractor Costs} = \text{Bureau/Office contractor expenses} + \text{applicant contractor expenses} + \text{FTE costs devoted to applicant document review} + \text{additional third-party costs}$$

4. Lead Bureaus and Offices shall **total FTE and contractor costs**, and any other direct costs associated with preparing an EIS and other environmental reviews, rounded to the nearest thousand-dollar figure, and prominently display the total costs on the EIS cover page at the Draft, Supplemental, and Final EIS stage.

$$\text{Total Costs} = \text{FTE Costs} + \text{Contractor Costs}$$

IV. Cost Reporting

1. The Lead Bureau or Office shall enter environmental review costs into the NEPA and Permit Tracking Database (Database) at the Draft EIS, Supplemental EIS, and Final EIS stages and include the total estimated costs on the covers of the Draft EIS, Supplemental EIS, and Final EIS. Please see Attachment 1 for the template language and placement of total estimated costs on EIS cover pages.
2. No later than 30 days after the publication or issuance of the final Agency decision or action on the project, the Lead Bureau or Office shall total its estimated environmental review costs and upload them into the Database.

Judicial Review

This guidance establishes internal Department guidelines only. It does not create any rights, substantive or procedural, legally enforceable by any party.

⁵ Work Breakdown Structure (WBS) coding may be used for applicable proposed actions, even if costs accrue across budget cycles. These codes can be used in the Department's time and attendance tracking system, QuickTime; travel approval and voucher system, Concur; and financial systems, including Federal Business Management Systems (FBMS) to assist with the calculation of authorization and environmental review costs associated with each project.

Attachment 1 – Example EIS Cover Page

DRAFT ENVIRONMENTAL IMPACT STATEMENT

**FOR THE PROPOSED HABITAT CONSERVATION PLAN FOR
THE ENDANGERED AMERICAN BURYING BEETLE FOR
AMERICAN ELECTRIC POWER IN OKLAHOMA,
ARKANSAS, AND TEXAS**

VOLUME I: CHAPTERS 1-7

U.S. Fish and Wildlife Service
Southwest Region
Albuquerque, NM

March 2018

Estimated Lead Agency Total
Costs Associated with Developing
and Producing This EIS

\$274,000



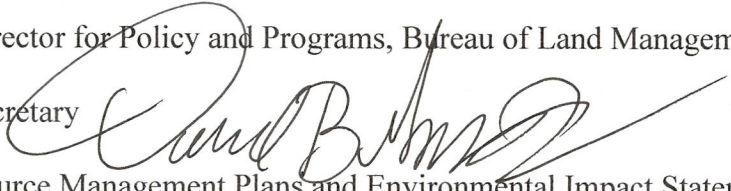
THE DEPUTY SECRETARY OF THE INTERIOR

WASHINGTON

AUG 17 2018

Memorandum

To: Deputy Director for Policy and Programs, Bureau of Land Management

From: Deputy Secretary 

Subject: Draft Resource Management Plans and Environmental Impact Statement
for the Grand Staircase-Escalante National Monument and for Federal Lands
Excluded from the Monument by Proclamation 9682

As the Secretary has made clear throughout his tenure, the Department of the Interior is opposed to the wholesale sale or transfer of public lands to States or private interests. This is acutely the case where such lands were previously designated within a national monument.

Earlier this week, the Bureau of Land Management (BLM) released Draft Resource Management Plans and an Environmental Impact Statement (Draft) for the Grand Staircase-Escalante National Monument (GSENM) and for Federal lands previously included in the GSENM. That Draft identifies a range of alternatives that allows for disposal of Federal lands under the Federal Land Policy and Management Act, as amended (FLPMA).

Because the current Draft is inconsistent with Departmental policy, I am directing BLM to modify the Draft so that it does not include any preferred alternative that identifies Federal lands for possible disposal under FLPMA. The failure to capture this inconsistency stops with me.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 27 2017

Memorandum

To: Michael Black
Acting Assistant Secretary – Indian Affairs

From: James E. Cason *James E Cason*
Acting Deputy Secretary

Subject: Law Enforcement Support – Standing Rock Sioux Reservation

In February 2017, I asked for the support of your law enforcement officers in assisting the Bureau of Indian Affairs Office of Justice Services, with law enforcement and security on the Standing Rock Sioux Reservations (SRST) in North Dakota. As you are aware, over the past several months, thousands of protestors had converged on or near the SRST in support of efforts to deter the drilling of a pipe line under the Missouri River by Dakota Access.

As a result of months of ongoing demonstrations, there remained hundreds of tons of trash, and demonstrators who refused to depart the camps. Due to the likely flooding of those areas, it became apparent that additional law enforcement resources were needed to address safety and environmental concerns on the SRST.

I am told that the men and women of the Bureau of Indian Affairs law enforcement community, along with U.S. Fish and Wildlife Service, U.S. National Park Service and U.S. Park Police law enforcement programs deployed to SRST with little notice and performed with dedication and professionalism. They quickly grasped the nuances of the situation and worked together as one team. Their respectful interactions with both tribal members and demonstrators were directly responsible for the departure of all of the demonstrators from the SRST with few arrests and the ultimate cleanup of the camp areas. Laudatory comments continue to come in from our state and local partners in North Dakota as well as the tribe at SRST.

Please pass along my deepest appreciation to the men and women in your law enforcement programs for a job well done.

cc: Acting Associate Director, Office of Justice Services



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

FEB 09 2018

Memorandum

To: Mary Kendall
Deputy Inspector General

From: David L. Bernhardt 
Deputy Secretary of the Interior

Subject: Report of Investigation – Alleged Ethics Violations by
IA Deputy Assistant Secretary – Case No. OI-PI-17-090-I



Thank you very much for providing your Report of Investigation into alleged ethics violations by former Deputy Assistant Secretary for Policy and Economic Development, Office of the Assistant Secretary – Indian Affairs, Gavin Clarkson.

As you are aware, Dr. Clarkson submitted his resignation on November 13, 2017. His resignation was effective December 31, 2017. He is no longer employed by the Department.

I greatly appreciated you and your team's willingness to highlight certain facts you identified in the course of your review prior to releasing your official report. Your willingness to do so, helped ensure that Departmental management had a timely factual understanding of certain events to take prompt and appropriate action.



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

APR 09 2018

Memorandum

To: All Department of the Interior Employees

From: Deputy Secretary *James D. Bernhardt*

Subject: Strengthening and Expanding the Department of the Interior's Ethics Program

On my first day in office, I sent a message to all of you emphasizing my belief that each of us who chooses to work at the Department of the Interior (Department) does so because we believe in serving the American people, love the Department's mission, and want to make it better. Since that time, the correctness of my view has been demonstrated over and over by our employees' actions.

At the same time, since I arrived to serve as Chief Operating Officer of the Department, I have also seen far too many reports from the Office of Inspector General of specific instances where employees have made decisions that were unethical and in some cases illegal. As I said on my day of arrival, such conduct reflects on all who work at the Department, whether we like that this is the case or not.

In addition, we currently operate in a world where hyperbole and false allegations now can pass for fact in public discourse. Such comments denigrate even lawful and appropriate conduct that is mischaracterized outside of the Department as unlawful or unethical.

Therefore, when confronted with a moment that creates a questionable issue, we can—and should—remember the ethical principles I have previously shared with you AND consult with the appropriate ethics official. Contact information for Bureau ethics officials can be found at <https://www.doi.gov/ethics/bem> and for the Departmental Ethics Office at <https://www.doi.gov/ethics/contact-information>.

It is important to remember that, in terms of the Standards of Ethical Conduct for Employees of the Executive Branch, you are operating in safe harbor if: you communicate with your ethics official, you provide them with the totality of the circumstances you are aware of, and they provide you guidance that you follow. No one else in the Department can give you a safe harbor—not your supervisor, not a lawyer in the Office of the Solicitor, not me.

One way the Secretary and I can assist you in this effort to foster ethical conduct is to help ensure that we have more people in place to address questions and develop sound ethical practices throughout the Department. That is why I am extremely pleased to announce two major additions to the Departmental Ethics Office: Scott de la Vega and Heather Gottry.

Scott de la Vega will serve as both Director of the Departmental Ethics Office and Designated Agency Ethics Official. Heather Gottry will serve as a Deputy Director of the Departmental

Ethics Office. Both of these individuals bring decades of subject-matter expertise and real-world experience in establishing and implementing robust ethics programs fully compliant with all laws, rules, and regulations. Both Scott and Heather start on April 16.

Prior to joining the Department, Scott de la Vega served for several years in various senior legal positions at the White House, including as Ethics Counsel to the Vice President and in the Office of the White House Counsel as well as Managing Counsel for Operations in the Executive Office of the President. In these roles, he oversaw the ethics review and financial disclosure clearance process for all White House officials; directly counseled senior White House staff, Cabinet officials, and nominees seeking Senate confirmation; formulated Administration policy on ethics issues; and recruited the best ethics lawyers from across the Government while increasing diversity. In his White House role, he also worked directly with senior leadership across the Executive Branch, including the Office of Government Ethics and the Office of Special Counsel. Prior to the White House, Scott served in leadership positions at other Federal agencies, as Vice President and Senior Counsel at two Fortune 500 corporations, and as both a trial and appellate criminal litigator in the U.S. Army's Judge Advocate General's Corps.

Immediately prior to joining the Department, Heather Gottry held senior ethics roles at the U.S. International Trade Commission and the U.S. Commodity Futures Trading Commission. From 2009 through 2012, she worked in the Office of White House Counsel as Associate Counsel to the President and as an ethics advisor. In her White House roles, she created highly regarded trainings for White House officials on a wide variety of ethics-related issues, including misuse of Government position, travel, gifts, entertainment, political activities, outside employment, and post-Government employment; successfully resolved difficult, complex, and novel ethics issues for Cabinet Secretaries; and developed innovative public-private partnerships that were also completely compliant with all applicable laws, rules, and regulations.

In addition, Ed McDonnell will continue to serve as a Deputy Director of the Departmental Ethics Office and as Alternate Designated Agency Ethics Official. The Executive Resources Board recently elevated this role to the rank of Senior Level, and I greatly appreciate Ed's willingness to continue advancing the highest ethical standards throughout the Department. I would also like to take this opportunity to thank Ed for serving honorably in an acting capacity as Designated Agency Ethics Official since the retirement of former Director and former Designated Agency Ethics Official Melinda Loftin.

From my perspective, each of these individuals embody the best and brightest in ethics. Hiring and promoting them to their respective new roles is part of our real commitment to make a meaningful contribution to incorporating the highest ethical standards into the Department's practices.

Let's never forget that public service is a public trust and that the 14 basic principles of ethical conduct bind us all. You can find these principles at the website of the Departmental Ethics Office: <https://www.doi.gov/ethics/basic-obligations-of-public-service>.

Thank you.



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

MAY 01 2018

Memorandum

To: All Department of the Interior Employees

From: Deputy Secretary 

Subject: An Act of Trust and Verify: Department Purchase Card Threshold Increased to \$10,000 with Internal Controls

As many of you know, Secretary Zinke has made empowering the field and streamlining red tape a priority for the Department. In addition, we have solicited your input on items that needed to be resolved to help further empower you. One of the items that we regularly heard from you on is identifying ways to streamline the purchase card process and raising the purchase limits.

As some of you know, in December 2017, Congress, as part of P.L. 115-91, included a provision that allows Agencies to increase purchase card thresholds up to \$10,000 for most purchases of supplies and services. Given this statutory change, I have raised the purchase card threshold from \$3,500 to \$10,000, effective immediately.

Increasing the purchase card spending limit provides opportunities for field personnel to quickly and easily buy the goods and services that they need, while allowing contracting officers to focus on more complex contracts.

In addition, while the Department currently has a strong system of internal controls over the purchase card program, I am directing Bureaus and Offices to implement an enhanced system of internal controls for the first 6 months to monitor potential increased program risk, as outlined in the attached Internal Control Plan. From the date of this memorandum through November 15, 2018, Bureaus must establish a mechanism to verify that purchase card transactions are only made in the course of official business; purchases are not made from prohibited sources; cardholder statements contain adequate documentation and are reviewed timely; and appropriate action is taken for instances of fraud or misuse. I have also asked the Office of Inspector General to review the implementation of the additional controls.

I believe our responsible exercise of this new authority can free folks' time up and demonstrate that you are well prepared to exercise sound discretion in the field.

Attachment

Department of the Interior

Internal Control Plan for Increased Purchase Card Threshold

Background

The Department of the Interior (Department) is increasing the default individual purchase limit for purchase card holders to \$10,000. At the outset of this program change, the Department will implement the enhanced internal controls described in this plan to monitor any potential increased program risk. This plan supplements, but does not supersede, the Department of the Interior Integrated Charge Card Program Policy.

The Department currently has a strong system of internal controls over the purchase card program. In 2016, the Office of Inspector General reviewed the purchase card program and provided 10 recommendations for improvement. All 10 of these recommendations have been closed. The Department continues to monitor the program and improve internal controls.

Action Required

From the date of the memo through November 15, 2018, Bureaus must establish a mechanism for verifying that purchase cards transactions align with the established principles of the charge card program. Specifically, Bureau procedures must be adequate to ensure that:

1. Card holders are not purchasing any product or service for personal benefit rather than job-related need.
2. Card holders are not purchasing prohibited categories of products and services. See the Department of the Interior Integrated Charge Card Program Policy for the list.
3. Card holders are not inappropriately splitting purchases to fall below the individual purchasing limit.
4. Card holders review statements in a timely manner and attach adequate documentation.
5. Supervisors review statements in a timely manner.
6. Appropriate action is taken for instances of fraud and misuse.

Bureaus must begin implementing their enhanced procedures immediately. No later than close of business on May 31, 2018, Bureaus must submit a summary of their enhanced procedures to the Office of Acquisition and Property Management (PAM). PAM will provide feedback if the plan does not propose adequate control procedures.

Bureaus must submit status reports throughout the enhanced internal control period that:

1. List instances of fraudulent, prohibited, or split purchases found during the reporting period, and actions taken as a result.
2. Summarize findings related to timely review and approval of purchase card statements, and actions taken as a result.

Reports must be submitted from the Bureau's Head of the Contracting Activity to the Deputy Secretary through PAM. The reporting schedule is as follows:

Report Due Date	Period Covered by Report
July 31	Present – June 30
October 15	July 1 – September 15
December 15	September 16 – November 15

For questions regarding this internal control plan, please contact Ms. Megan Olsen, Director, PAM, at 202-513-0692 or Megan_Olsen@ios.doi.gov.



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

Memorandum

To: Margaret Weichert
Deputy Director for Management
Office of Management and Budget

JUL 23 2018

From: David L. Bernhardt
Deputy Secretary
Department of the Interior

Subject: Waiver for Senior Official Charter Air Travel

Given the Administration's commitment to ensure that we are spending taxpayers' resources wisely, the Department of the Interior (Department) respectfully requests approval for senior officials to use charter aircraft for official travel in those instances where commercial travel is limited or does not exist to fulfill our statutory missions.

On September 29, 2017, Director Mulvaney issued Memorandum M-17-32, "Travel on Government-Owned, Rented, Leased, or Chartered Aircraft" (Memorandum) that among other items, provided that "all travel on Government-owned, rented, leased, or chartered aircraft, except space-available travel and travel to meet mission requirements (as those situations are defined in Circular A-126) shall require prior approval from the White House Chief of Staff." In addition, the Memorandum explained that "OMB is also reviewing longstanding guidance pertaining to the use of Government-owned, rented, leased, and chartered aircraft and welcomes any suggestions that would strengthen existing controls."

Recent travel has demonstrated that the apparent lack of a clear and expeditious waiver process for charter travel consistent with M-17-32 is challenging the Department's ability to carry out its mission and actually results in a less efficient utilization of the Department's resources.

Given its land management responsibility of nearly one-fifth of the acreage in the United States, and its offices in nearly 2,400 locations around the United States – many of which are remote and not served regularly or at all by commercial scheduled airlines – the Department has a particular need for flexibility in selecting mission-essential air travel.

For example, in fulfilling its responsibilities to Native Americans, Alaska Natives, and affiliated island communities, travel to far-off and geographically isolated communities not served by commercial airlines is a common mission requirement. Charter aircraft are often the only viable option available to senior officials to meet these representatives from these remote areas. Alaska alone has 229 federally-recognized Tribes, most of whom are not on a road network and are not served by commercial scheduled airlines. In other parts of the United States and U.S. territories, airline routes may operate only once per day or less. Similarly, energy and mineral production

areas are often remote, as are facilities relating to the Department's water and wildlife resource management functions. As a result, the Department, including its most senior officials, has traditionally utilized charter aircraft for its travel, which has reduced the need for maintaining a more costly air fleet of its own.

The Department Has a Robust Charter Air Travel Review and Approval Process

The Department takes its responsibilities as stewards of the public trust very seriously. We have a history of successfully managing charter air travel through a robust set of internal controls. The Department has focused even greater attention on aircraft travel management in response to the Memorandum. The Department carefully evaluates every request for charter air travel. The OMB Circular No. A-76, "Performance of Commercial Activities," (A-76) requires Federal agencies to evaluate the cost of commercial activities they undertake and to determine the most economical way to perform the work. When evaluating a request to transport a senior official, Department bureau scheduling offices compare the costs of charter service to the cost of using Department fleet aircraft or commercial air services. The cost comparisons and written justifications for the proposed travel are reviewed by the Office of the Solicitor. Travel by charter aircraft *must be more cost effective* than other means of transportation in order to be approved, and the approval process is documented, objective, and thorough. The Department compiles information on approved requests and reports as required by A-76.

The Department Has Responsibly Evaluated All Air Transport Alternatives

The Department has also evaluated all air travel options, including the acquisition of Department-owned aircraft. The business case for purchasing new aircraft is substantial to justify. For example, the acquisition cost of a single new light passenger aircraft is nearly \$800,000, and annual operations and maintenance expenses are an additional \$109,500 per year. In contrast, approved Department charter flights are selected from a list of competitively selected, safety-reviewed vendors with known costs that are available to travel to almost any remote location on short notice—a very cost effective approach to senior official mission-related travel to areas not well served by commercial airlines and to meet mission objectives. Attached to this memorandum is a chart providing examples of mission-essential charter aircraft travel to remote locations where such travel is most cost effective alternative.

Request for Pre-Approval Should Be Granted

The Department manages senior official air travel—including charter air travel—responsibly and with Solicitor oversight. There is minimal programmatic risk associated with this requested waiver. The Department respectfully requests that the waiver be granted.

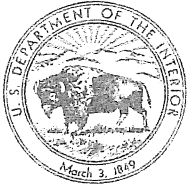
Attachment

Illustrative Examples of Chartered Flight Routes for DOI Senior Officials

The aircraft that DOI schedules for Charter flights (rotary and fixed wing) are on DOI Aircraft contracts and can be reviewed at: <https://www.doi.gov/aviation/aqd/contracts>. Vendors compete through a competitive process and aircraft and pilots receive Office of Aviation Services cards for the missions they are approved to fly. They are available on an On-Call Basis.

The table below provides examples of senior officials' charter flight routes in remote areas.

Travel Date(s)	Flight Origin	En Route Location(s)	Flight Destination
30-Jun-2014	Lihue, HI	N/A	Ni'ihau, HI
25-Sept-2014 26-Sept-2014	Boise, ID	Lakeview, OR Window Rock, AZ Page, AZ	Phoenix, AZ
16-Feb-2015	Kotzebue, AK	Kivalina, AK	Kotzebue, AK
25-Sep-2015	Bethel, AK	N/A	Aniak, AK
1-Aug-2016	Barrow, AK	N/A	Deadhorse, AK
5-Aug-2016	Fairbanks, AK	Galena, AK Red Devil, AK	Anchorage, AK
25-Aug-2016	Bakersfield, CA	Kalispell, MT	Livingston, MT
4-April-2017 5-April-2017	Boulder City, NV	Laughlin, NV Lake Mead National Recreation Area Glen Canyon National Recreation Area, Page, AZ	Boulder City, NV
27-May-2017	Deadhorse, AK	Alpine, AK	Fairbanks, AK
31-Mar-2017	St. Croix, USVI	St. Thomas, USVI	St. Croix, USVI
24-Jan-18	Anchorage, AK	N/A	Kaktovik, AK
3-May-18	Grand Canyon NP Helibase	N/A	Havasupai, AZ



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

AUG 06 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
NEPA Practitioners

From: Deputy Secretary *Carol M. Hunt*

Subject: Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments

Purpose:

On August 31, 2017, I issued Secretary's Order 3355 (Order) to improve the Department of the Interior's (Department) environmental review processes under the National Environmental Policy Act (NEPA). Section 4b of the Order directed the Department's Bureau and Office (Bureau) heads to recommend target page and time goals for the preparation of Environmental Assessments (EA) where a Bureau is the Lead Agency. The following guidance considers and incorporates each Bureau's feedback for the thorough and timely consideration of environmental impacts analyzed within an EA document.

EA Guidance:

1. EA Page and Time Guidelines:

- a. Bureaus should strive to produce EAs that are consistent with both the Council on Environmental Quality's (CEQ) guidance and the Department's normal practice. The CEQ recommends that EAs be approximately 10-15 pages and be completed in 3 months or less.¹ The Department generally produces EAs that are approximately 30-40 pages.
- b. In certain circumstances, EAs may need to exceed CEQ's guidance and the Department's normal practice. In these instances, Bureaus should strive to complete EAs in 75 pages or less, excluding appendices, and to conclude the EA

¹ Council on Environmental Quality: Memorandum to Agencies – *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026 (March 23, 1981).

review within 180 calendar days of the commencement² date, pursuant to 43 CFR § 46.325.³

- c. If a proposed action presents particular environmental challenges that make it unlikely for an EA to be completed in less than 75 pages or 180 days, the EA Project Teams should consult with the Office of the Solicitor, Bureau Director, and first-line Senior Executive Service (SES) member with line authority over the proposed action to determine the best course of action.

2. EA Tracking and Management:

- a. Within 30 calendar days of the effective date of this Memorandum:
 - i. Bureaus shall upload⁴ EA project information and schedules to the NEPA and Permit Tracking Database (Database) for EAs that were initiated before the effective date of this Memorandum and that are not yet complete, if the total time to complete the EA is likely to exceed 180 calendar days from the effective date of this Memorandum or is unlikely to be completed in 75 pages or less.
 - ii. Bureaus are not required to upload existing EA project information and schedules if the EA will be completed within 180 calendar days of the date of this Memorandum.
 - iii. Bureaus shall upload EA project information and schedules to the Database for EAs that are initiated after the effective date of this Memorandum if the total time to complete the EA is likely to exceed 180 calendar days or is not likely to be completed in 75 pages or less.
- b. EA documents should continue to be approved and/or cleared according to each Bureau's current program, and with the expectation that the first-line SES member with line authority over the proposed action will bear ultimate responsibility for each EA.

3. EA Team and Solicitor Assignments:

- a. For each EA to be uploaded into the Database, provide the name, title, and contact information for the first-line SES member with line authority over the proposed action and the other members of the EA Project Team, by uploading the

² EAs commence once a Bureau receives a completed application from a project proponent, receives or obtains sufficient information to analyze the proposed action, publishes a Notice of Proposed Rulemaking in the Federal Register, or internally determines to pursue action planning.

³ EAs conclude upon the issuance of a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), the signing of a Finding of No Significant Impact (FONSI) or mitigated FONSI, or written determination of no further action.

⁴ The task of uploading EA project information and schedules to the Database may be assigned to any Bureau employee, however, that person should have first-hand knowledge of the project and the status of the EA document.

information into the Database. Contact information shall include a telephone number and an email address.⁵

- b. An attorney in the Office of the Solicitor, based either regionally or in Washington, DC, shall be incorporated into all new and existing EA Project Teams⁶ if the EA is expected to be controversial, complex, or is perceived to possess a greater-than-average risk of litigation.⁷ Bureaus and their EA Project Teams shall present EAs that may meet this criteria to the Office of the Solicitor, which will then determine whether an attorney needs to be assigned to the EA Project Team. The assigned attorney is responsible for ensuring that the EA is legally sufficient prior to the conclusion of the EA analysis.
- c. Where required, Bureaus shall provide the assigned attorney's name and contact information in the Database.

4. Meeting EA Page and Timeline Goals:

The following recommendations should help EA Project Teams plan with the goal of completing an EA in 180 calendar days and 75 pages or less. While each of these recommendations may prove helpful, Bureaus are expected to draw upon their expertise and experience to address individual issues as they arise:

- a. Departmental NEPA regulations state that an EA can be prepared in any format that is useful to facilitating planning, decision making, and informing the public.⁸ The attachment provides a suggested layout and page count for a fully developed, yet concise EA.⁹
- b. Upon receiving demonstrated interest from a project proponent, and prior to initiating an EA, it is considered best practice to assess or evaluate proponent applications to ensure that they are complete and properly prepared by the proponent. This assessment may be comprised of a meeting, teleconference, follow-up discussion, or an application review with the proponent prior to accepting an application. This assessment is not a decisional step, but is intended to confirm that proponents are ready to proceed.

⁵ This directive is not asking for the list of preparers pursuant to 40 CFR §1502.17, but those responsible for project oversight, management, and compliance with this Memorandum pursuant to 43 CFR § 46.310.

⁶ EA Project Teams may include, but are not limited to, Departmental NEPA staff, Senior Executive Service members, subject matter experts, contractors, planners, attorneys from the Office of the Solicitor, and others who work on EAs at the field level.

⁷ This term does not alleviate the Office of the Solicitor from reviewing EA documents prior to publication; it simply limits their required formal EA Project Team participation to projects that are controversial, unusually complex, or possess a greater-than-average litigation risk.

⁸ 43 CFR § 46.310, 46.315.

⁹ This template is simply meant as a guide to help EAs remain under 75 pages, in the event that page restraint becomes an issue, and Bureaus should utilize their experience and expertise to find solutions that address unique circumstances as they arise.

- c. Pursuant to 40 CFR §1501.6, Bureaus shall include as cooperating Agencies other Federal agencies with jurisdiction by law or special expertise in the project subject matter,¹⁰ and Bureaus must cooperate at the request of another Bureau.

5. Public Involvement:

- a. Both CEQ¹¹ and the Department's¹² regulations require some form of public involvement – *to the extent practicable*¹³ – in the preparation of an EA. Each regulation gives Bureaus the discretion to determine how much and what kind of public involvement is most appropriate for an individual EA.
- b. Public involvement may include, but is not limited to, public notice prior to or during EA preparation, public scoping, public meetings, requests for information, or public comment on the completed EA and unsigned Finding of No Significant Impact.
- c. Bureaus should ensure that the selected level of public involvement is incorporated into the project's 180-calendar-day timeline.¹⁴

6. Contractor Guidance:

When a Bureau is using a contractor to prepare an EA, this Memorandum's page and time goals shall be included and adhered to as a material term in each Bureau's solicitation for a Statement of Work, and the subsequent contract for EA preparation services, issued after the date of this Memorandum.

7. Bureau NEPA Handbooks:

- a. According to the Secretary's Order 3355 guidance documents issued on April 27, 2018, Bureau Directors and their NEPA staff are meeting with the Office of the Deputy Secretary and the Office of Environmental Policy and Compliance to identify whether changes are required to each Bureau's NEPA Handbook (Handbook). To avoid duplicating efforts, Bureaus shall update their Handbooks to reflect the EA guidance within this Memorandum in conjunction with Environmental Impact Statement (EIS) updates. Both the EIS and the EA NEPA Handbook update meetings shall now be completed by September 1, 2018, instead of the original date of July 2, 2018.

¹⁰ It shall be incumbent upon Bureaus acting as Lead Agencies to ensure that cooperating Federal Agencies outside of the Department adhere to the Department's page and timeliness guidelines as nearly as is practicable, subject to applicable law, statutory authority, and appropriations.

¹¹ 40 CFR 1500.2(d), 1501.4(e)(2), 1506.6.

¹² 43 CFR § 46.305.

¹³ *Id.*

¹⁴ Deviation from this guidance may be required if the EA is tied to a formal Agency rulemaking procedure that proscribes a certain level of public involvement – such as public comment.

- b. Bureau Handbook changes should be implemented as soon as practicable through issuance of an updated Handbook or by using an established, Bureau-specific amendment processes, such as issuance of a Permanent Instruction Memorandum. If a Permanent Instruction Memorandum or other amendment process is utilized, the Bureau's Handbook shall be revised and amended as soon as practicable.

Additional Provisions:

8. Nothing contained in this Memorandum is intended to or should be construed to limit or affect the authority or legal responsibilities of the Department's Bureaus or other Federal- or State-level government entities, nor bind them to perform actions beyond their respective authorities.
9. This Memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
10. Specific activities that involve the transfer of money, services, or property between or among the Bureaus may require execution of separate agreements or contracts that occur as a matter of course.
11. This Memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its Departments, Agencies, or entities, its officers, employees, or agents, or any other person.

Effective Date:

Directives and guidance within this Memorandum are effective immediately upon distribution.

Attachment

Attachment – DOI EA Page Allocation Guide

Chapter/Section	EA Page Count
Executive Summary	2
Purpose and Need for Action	4
Proposed Action	4
Alternatives	12
Affected Environment	20
Environmental Consequences	28
Mitigation (If applicable)	5
Total	75



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON, DC 20240

JUL 28 2017

Dear Tribal Leader:

I am writing to update you on the Land Buy-Back Program for Tribal Nations (Program). In particular, this letter describes the results of the recent strategy review of the Program, which focused on determining how to consolidate the highest number of fractional interests with the remaining \$540 million in funding. There are two major results to share at this time: 1) a number of new policies to leverage the available resources, and 2) a revised set of locations where Program implementation may occur in the months ahead.

Thank you to the many individuals who took time to engage with us on this important Program. I want to recognize the significant input received from tribal leaders over the last few months through the open comment period announced in the *Federal Register* and during the multiple meetings the Department of the Interior (Department) engaged in with many of you, as well as hearing from the participants at the Program's 2017 Listening Session. The feedback received is diverse. Some tribes requested that the Program return to their location, while others requested that there be no changes to the schedule announced in May 2016. Others suggested that tribes might use their own funds to purchase fractional interests to take advantage of Program resources and processes, such as mapping and appraisals.

In addition to considering the comments received, the Program evaluated numerous alternative methods and policies during the strategy review. The resulting approach and locations described in this letter reflect the Department's consideration of tribal comments and other factors, including a greater emphasis on maximizing the number of fractional interests reduced, the available funding, as well as cost, efficiency, and leveraging of Program resources.

1. **Leveraging Resources.** The Program decided to pursue and implement new policies to better leverage Program resources, facilitate greater efficiencies, and increase opportunities to consolidate fractional interests, including:
 - Facilitating tribal and co-owner purchases. In response to tribal feedback, we are evaluating the Program's ability to facilitate tribal and co-owner purchases. We are also working to make certain information, such as mapping and land appraisals, more readily available. This may help tribes direct their own resources to reduce fractionation and manage tribal land. It may also facilitate individual landowner purchases. The Program anticipates announcing more information on these matters in the next few months.
 - Maximizing use of appraisals. Initially, the Program established an appraisal validity period of up to 9 months. Many tribal leaders urged the Department to consider a period of up to 12 months. We decided that we will strive to utilize mass and project

appraisals for up to 12 months, as long as appropriate market conditions exist when such appraisals are issued and thereafter. This approach seeks to maximize the time available to leverage the appraisals.

- Streamlining agreements with tribes. The Program revised the cooperative agreement process to clarify the funding parameters for tribes and to ensure that the maximum amount of the funding goes to land consolidation.
 - Revised acquisition approach. To further maximize the remaining funding, the Program developed an offer approach that focused on acquiring: 1) interests in all Mineral (M) tracts determined to have no current economically viable mineral value, and 2) interests that are less than 25 percent in Surface (S) and Both (B) tracts. Resources permitting, the Program will also look to give priority to those tracts or interests where tribes or individuals are committed to using their own funds to acquire fractional interests.
 - Extending purchase offer timing. Previously, purchase offers were valid for 45 calendar days from the date of the offer cover letter. Tribes and landowners requested a longer validity period. We decided to extend the due date from 45 days to 60 days to allow landowners more time to make an informed decision about their land.
2. **Revised Schedule.** To further maximize the consolidation of interests, we revised our implementation schedule based on several factors including: severity of fractionation; appraisal complexity; degree of ownership overlap between locations or geographic proximity; tribal readiness; past response rate; and cost and efficiency (including land value). With these factors in mind, the Department will look to implement the Program at the following locations:
- | | |
|--------------------------|---------------------------|
| · Blackfeet | · Northern Cheyenne |
| · Bois Forte (Nett Lake) | · Pine Ridge |
| · Cheyenne and Arapaho | · Rosebud |
| · Cheyenne River | · Santee Sioux (Nebraska) |
| · Crow | · Skokomish |
| · Fond du Lac | · Spirit Lake |
| · Fort Belknap | · Standing Rock |
| · Fort Berthold | · Umatilla |
| · Fort Peck | · Warm Springs |
| · Navajo | · Wind River |

Because effective planning and coordination produces the best results, the Program will continue to educate landowners and build cooperative working relationships with tribes and their land staff. A Program representative will contact each tribe at the initial stages of planning for implementation.

The Program will continually assess progress and it may revise the schedule or add locations as capacity and resources allow, depending on the results achieved. Offer response rates, for example, will inform how many locations receive offers.

I recognize that some of you will be disappointed with the schedule changes since the Department previously announced 105 locations for implementation. However, our analysis during the strategy review period demonstrates that the revised schedule most effectively maximizes the remaining dollars to achieve:

- the greatest reduction of fractional interests;
- the largest number possible of landowners able to participate; and
- the most effective use of the Department's limited resources.

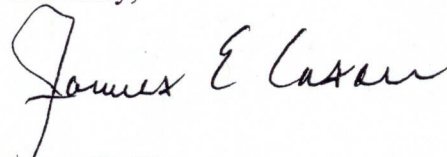
Several tribes commented that they have invested energy and resources in preparation for implementation of the Program. That work may help build a foundation for the policies outlined above. We look forward to collaborating with you to explore these alternatives.

It is clear that we have a major, long-term challenge before us. As I said during my testimony before the U.S. House Subcommittee on Indian, Insular, and Alaska Native Affairs in May of this year, the Land Buy-Back Program for Tribal Nations is a once in a lifetime opportunity to meaningfully address fractional interests that plague tribal communities and their efforts towards sovereignty and self-determination.

The Program's impressive level of collaboration within the Department of the Interior and with tribes will continue. Our staff is dedicated to efficiently and effectively using the remaining funds within the time currently allowed. I am committed to working with you to pursue multiple tools and methods to address fractionation and the many problems, inefficiencies, and impediments to infrastructure that it creates for Indian Country.

Again, your direct participation in this Program is much appreciated and worthwhile. I welcome ongoing dialogue about the future of the Program and will ensure that Program staff continue to engage with you and provide updates in various settings. Your continued involvement will be instrumental as we move forward with the Program and other initiatives to improve land management and productivity.

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Cason". The signature is fluid and cursive, with a large initial "J" and "C".

James E. Cason
Associate Deputy Secretary

Strategy Review Period – Approval of Updated Implementation Schedule

Revised Schedule. The Land Buy-Back Program for Tribal Nations (Program) determined a revised schedule of locations during its strategy review period, focused on maximizing the interests consolidated with the remaining Trust Land Consolidation Fund (Fund). Two main steps were involved in determining a revised schedule. First, the analysis emphasized fractional interest size and land cost. This step yielded a potential set of locations. Second, the Program refined the set of locations, considering various implementation challenges and other factors (such as cost and time efficiency, severity of fractionation, geographic proximity, geographic diversity, appraisal complexity, tribal readiness, and number of willing sellers). This resulted in a list of 49 potential locations, with estimated costs per acre ranging from \$500 to \$4,000, in addition to 4 locations with agreements signed before the strategy review period began. The Program estimates that it may implement at 53 locations to utilize the Fund. The revised schedule does not include 38 locations that were previously included in the schedule of 105 locations announced in May 2016.

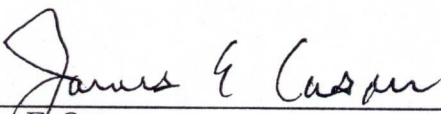
Offer Set Construction. The Program will include mineral (M) interests (regardless of size), and surface (S) and both (B) interests that are less than 25 percent ownership. Additionally, the Program, through the Bureau of Indian Affairs Acquisition Center, will not make offers on interests and/or tracts that it deems to be less cost efficient. The Program will also look to facilitate the consolidation of other interests by individuals and/or tribes.

Eliminating Purchase Estimates. The Program will no longer use pre-determined purchase estimates for land sales at locations on its revised schedule (with the exception of some locations with agreements existing before the strategy review period began). The Program will not place a dollar value limit on sales at a location (to the extent that sufficient funds are available to obligate and expend). As a consequence, it may not implement at all of the 53 locations, because it may spend the remaining Fund more quickly than anticipated.

Tribal Priorities. The Program will continue to request that tribes develop a prioritized list of tracts for acquisition (i.e., tribal priorities). Program staff will clarify that while tribal priorities may have a minimal effect on how offers are constructed, they may have other benefits, such as informing mapping clean-up activities, potential appraisal work, environmental due diligence work, and focused outreach activities.

Rollout. The Program will announce 20 locations where implementation is planned to occur through mid-2019, listed below in estimated order of implementation, based on several factors (e.g., land cost, implementation efficiencies, and tribal readiness). The 20 locations include 8 where the Program has not yet been implemented (and were included in the previously announced schedule) and 12 locations where the Program has previously been implemented (return-to locations). New locations are indicated with an asterisk, and those with an existing agreement are indicated with a plus sign. All other locations are return-to locations. The Program will continuously analyze available resources and make an announcement to revise the schedule or add locations for implementation, if necessary.

- | | | | |
|-------------------------|----------------------|--------------------|--------------------|
| 1. Cheyenne & Arapaho*+ | 6. Northern Cheyenne | 12. Fort Berthold* | 18. Standing Rock |
| 2. Spirit Lake*+ | 7. Crow | 13. Fort Peck | 19. Cheyenne River |
| 3. Skokomish*+ | 8. Pine Ridge | 14. Fort Belknap | 20. Wind River*+ |
| 4. Warm Springs* | 9. Rosebud | 15. Navajo | |
| 5. Umatilla | 10. Santee Sioux* | 16. Blackfeet | |
| | 11. Bois Forte* | 17. Fond du Lac | |


James E. Cason
Associate Deputy Secretary of the Interior

7/28/17
Date

Extending the Appraisal Validity Period up to 12 Months

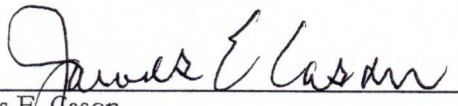
Background. Since its inception, the Land Buy-Back Program for Tribal Nations (Program) used a nine-month appraisal validity period pursuant to the "Memorandum on Establishing Fair Market Values" signed by Secretary Jewell in 2013. The Program received feedback from tribes requesting extending the appraisal validity period. During the strategy review period, the Program worked to identify ways to maximize use of the fund to consolidate fractional interests. The Program is working to further leverage its infrastructure to facilitate tribal and co-owner purchases.

Decision. The Program will extend the appraisal validity period for appraisals performed using either a mass appraisal or project appraisal method from 9 months to up to 12 months as long as appropriate market conditions exist when such appraisals are issued. This decision is consistent with the Program's efforts to further leverage its infrastructure to facilitate other non-Buy-Back Program consolidation efforts. Extending the validity period will allow tribes and landowners more time, both before and after the Program offers are mailed, to purchase interests from other landowners. A longer validity period will afford the Program additional time to send out multiple sets of smaller waves over a longer period if available funding is not sufficient for the Program to send out one larger offer set. This decision is consistent with the validity period established by other Bureaus within the Department.

Next steps. In order to mitigate potential risks associated with an extended validity period, the Program will work with its partners on the use of various controls that will support the new approach, including:

1. Monitoring market conditions. The Program will work with BIA and OAS to determine monitoring methods for market conditions, including evaluation of current data sources and potential development of data entry and other processes to help monitor real property and/or real estate market conditions. This data could be used by the Program, tribes, and individual Indian landowners to facilitate a determination of whether values may be used. Additional funding may be required to gather ongoing sales data and to provide alerts of changes that may impact appraisal validity (the cost/benefit of such measures will be considered).
2. Coordination and communication. Once a month, during its regular offer schedule call, the Program will discuss, based in part on available market information from OAS, the appraisal validity for each active location where offers are being made throughout the administratively-determined 12-month validity period for all appraisals performed using either a mass appraisal or a project appraisal method.
3. Adjust offer and outreach materials. The Program will revise outreach and offer materials to communicate these changes. Specifically, for example, BIA's Acquisitions Center (BIA AC) will revise the offer cover letter to communicate clearly the appraisal effective date. The BIA AC will also adjust the cover letter language to advise landowners of the appraisal's effective date and to remind them to be mindful of the potential for continually changing market trends.
4. Appraisal transmittal letter. The Program will revise the appraisal transmittal letter to communicate clearly the effective date of the appraisal(s), as well as highlighting the intended use cautions contained within the letter. These modifications will aid both tribes and individual landowners to

understand fully the value of their land, especially when they intend to use the appraisals for other land sale transactions. Tribes and individual landowners who plan to use Program appraisals for other transactions should make themselves aware of possible changes to the land and/or real estate market subsequent to the appraisal effective date.


James E. Cason
Associate Deputy Secretary of the Interior

7/28/17
Date

Cooperative Agreement Policy Changes to Improve Cost Efficiency

The Land Buy-Back Program for Tribal Nations enters into cooperative agreements with tribes primarily to support outreach activities. To date, the Program has entered into cooperative agreements with 36 Tribes.

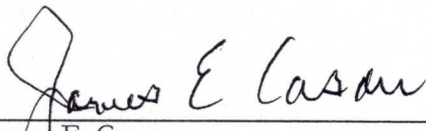
Cooperative agreements should continue to be utilized. Cooperative agreements are more cost-efficient for the Program than maintaining the necessary staffing levels to perform outreach to thousands of landowners. Enabling local temporary teams to perform effective outreach has allowed the Program to minimize operational costs and realize the benefit from a tribe's knowledge of its reservation and landowners. Based on the Program's analysis, agreements are associated with higher purchase rates than locations with memoranda of agreements or no agreements. Previous locations with cooperative agreements saw a purchase rate of 46 percent of aggregate fractional interests, compared to 36 percent at locations with memoranda of agreements, and 23 percent at locations with no agreement locations.

Agreement policy changes. The Program will implement new policies to further improve cost efficiency:

- Reduce the target period of performance for cooperative agreements from 12 months to 9 months for new locations, and 7 months for return-to locations. A shorter timeline would result in substantial cost savings by reducing the monthly operational costs of the local outreach teams.
- Limit locations eligible for cooperative agreements to those with 1,000 or more eligible landowners. Cost savings would be realized as a result of not entering into cooperative agreements with approximately 20 percent of the locations scheduled moving forward. The Program will still enter into memoranda of agreement with locations with less than 1,000 landowners.
- Use a "1 FTE (fulltime employee) for every 1,000 eligible landowners" formula for the number of FTEs that may be funded under cooperative agreements, not to exceed 7 FTEs. This formula, developed from a review of awards to date, would result in cost savings as fewer staff positions will be funded moving forward. This change is easy to understand, consistent, and should streamline the application process for tribes.
- Specify funding parameters, including no funding for solely administrative positions, limited funding for stand-alone outreach events, and no funding for vehicle purchases.

Utilize cooperative agreement award template. The Program will award cooperative agreements within the above parameters by utilizing the attached template. In February 2017, the template was revised to exclude mention of purchase estimates. The Program recently further revised the template to adjust language reflecting the Program's updated policy on tribal priorities. The template reflects feedback from the Associate Deputy Secretary and from the Solicitor's office.

Signature and award authority. To promote timely and efficient operations, the Program plans to move forward with agreements within the parameters outlined above with scheduled locations. This document is to comply with the memorandum regarding "Managing Grants, Cooperative Agreements, and Other Significant Decisions" issued by Secretary Zinke on April 12, 2017. Per the Associate Deputy Secretary's approval of this document, the Program Director will have signature authority for all future agreements, unless otherwise notified.


James E. Cason
Associate Deputy Secretary of the Interior

7/28/17
Date

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT is entered into by and between the U.S. Department of the Interior (the "Department") Land Buy-Back Program for Tribal Nations (the "Buy-Back Program") and the [TRIBE] (the "Participating Tribe") (collectively the "Parties") to describe the collaborative land consolidation implementation activities for the [RESERVATION] (the "Reservation").

I. RECITALS

- a. The Settlement Agreement in Cobell v. Salazar, as confirmed by the Claims Resolution Act of 2010, Public Law No. 111-291 (the "Settlement"), establishes a \$1.9 billion Trust Land Consolidation Fund (the "Fund") to purchase fractional interests ("Fractional Interests") in trust or restricted land.
- b. Under the Settlement, the Secretary of the Interior (the "Secretary") retains the authority to acquire, at the discretion of the Secretary, any Fractional Interests in trust or restricted land.
- c. The Secretary established the Buy-Back Program on December 17, 2012, to manage the Fund and implement the land consolidation program called for by the Settlement.
- d. Under the Settlement, after ten years, commencing on November 24, 2012, any monies remaining in the Fund shall be returned to the U.S. Department of Treasury; thus, the success of the Buy-Back Program, and the full expenditure of the Fund, depends upon the identification and consent of willing sellers to sell their Fractional Interests within a limited time period.
- e. The Buy-Back Program published a Status Report dated November 1, 2016 and amended November 7, 2016 (the "Status Report"), which summarizes the key parameters of the Settlement and the corresponding implementation approach and processes of the Buy-Back Program.
- f. The Settlement limits the amount of the Fund that can be used for the administrative costs to implement the Buy-Back Program to fifteen percent of the \$1.9 billion, and the Parties recognize the value and need for efficient and well-coordinated outreach and other implementation activities.
- g. The Participating Tribe represents that it has staff possessing the expertise, experience and knowledge about allotted trust land ownership on its Reservation, which will facilitate the implementation of the Settlement and Buy-Back Program in a manner that reflects the priorities and enhances the sovereignty of the Participating Tribe.
- h. Under the 2000 Indian Land Consolidation Act ("ILCA") Amendments, 25 U.S.C. § 2212 (b)(3)(C), the Secretary, to the extent practicable, may enter into agreements with the tribal government that exercises jurisdiction over the land involved or a subordinate

entity of the tribal government to carry out some or all of the Secretary's land acquisition program, which agreements are not subject to the provisions of the Indian Self-Determination and Assistance Act ("ISDEAA"), 25 U.S.C. § 450 *et seq.*

- i. As described in the Status Report, within the Reservation there are approximately _____ fractionated tracts of land (the "Fractionated Tracts"), comprising _____ acres with _____ purchasable Fractional Interests and _____ associated unique landowners, some of which may be members of different tribal nations (the "Owners").
- j. The Buy-Back Program will purchase Fractional Interests from Owners who voluntarily decide to sell (i) following an offer to purchase and (ii) within a specified time.
- k. The Participating Tribe's participation in the Buy-Back Program has been authorized through the adoption of [TRIBAL AUTHORIZATION NUMBER AND/OR DATE, AS APPLICABLE].
- l. Pursuant to 25 U.S.C. § 2216(e), the Participating Tribe has submitted a request [TRIBAL AUTHORIZATION NUMBER AND/OR DATE, AS APPLICABLE] for a list of names and mailing addresses of the Owners and information on the location of the tracts and the percentage of undivided interest(s) held by each Owner.
- m. The Participating Tribe represents that it has the administrative and substantive capability to perform any and all requirements set forth in this Cooperative Agreement.

BASED ON THE ABOVE RECITALS, the Parties enter into the following Cooperative Agreement.

II. AUTHORITY

This Cooperative Agreement is entered into under the Settlement and ILCA. It is not subject to the provisions of the ISDEAA.

III. PURPOSE

This Cooperative Agreement is designed to facilitate a collaborative, government-to-government implementation of the Buy-Back Program. It also provides a common understanding between the Buy-Back Program and the Participating Tribe regarding important goals, objectives, activities, products, services, and associated timetables necessary to acquire as many of the Fractional Interests as possible through collaborative implementation efforts.

Substantial involvement by the Buy-Back Program is anticipated during the performance of activities funded under this Cooperative Agreement. The Buy-Back Program will:

- a. Participate and collaborate jointly with the Participating Tribe in carrying out the scope and objectives described herein.

- b. Review and approve modifications or sub-grants, prior to award.
- c. Have close operational involvement during performance of this Cooperative Agreement and of all phases of the Buy-Back Program.

IV. SCOPE

- a. The Participating Tribe's _____[DATE] Cooperative Agreement Application, incorporated herein, describes the requirements, anticipated deliverables and other specific details of activities to be undertaken with the funds provided through this Cooperative Agreement. The Buy-Back Program approves the Participating Tribe's Cooperative Agreement Application, in accordance with the terms and conditions stated herein, with the following exceptions, additions, and clarifications:
 - i. The Participating Tribe agrees to perform outreach during implementation of the Buy-Back Program to foster informed decision making. The outreach activities performed by the Participating Tribe must include:
 - 1. Identifying addresses and updating Owner contact information;
 - 2. Notifying Owners, including Whereabouts Unknown Owners, of the opportunity to sell;
 - 3. Identifying interested sellers;
 - 4. Conducting pre-offer outreach to Owners; and
 - 5. Conducting post-offer outreach to Owners.
 - ii. In order to facilitate informed decision-making by landowners, the Participating Tribe will disseminate brochures and materials created by the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians regarding the American Indian Probate Reform Act of 2004 ("AIPRA").
 - iii. The funding provided by this Cooperative Agreement may not be utilized for actual will-writing, estate-planning, providing legal advice or other similar activities. Outreach may include the dissemination of Department of the Interior-provided information, available on the Buy-Back Program's website at: www.doi.gov/buybackprogram, to Owners regarding the following key background topics related to land consolidation; fractionation, AIPRA, life estates, gift deeds, implications of passing away without a written will, and probate. This will facilitate informed decision making by Owners in relation to offers from the Buy-Back Program.
 - iv. The Buy-Back Program currently estimates sending purchase offers to Owners in _____[TIMEFRAME]. The Participating Tribe's proposed timeline, as detailed in the Application Narrative, may need to be adjusted to align with this offer schedule. Should the Buy-Back Program's valuation and acquisition schedules require adjustment, the Buy-Back Program will work cooperatively with the Participating Tribe to adjust the overall schedule as necessary.

- v. If the Participating Tribe recommends offers to be made for interests in tracts with unleased improvements, the Participating Tribe must pass a timely Tribal Resolution (or take equivalent action under the Participating Tribe's normal operating procedure) stating that "the [Participating Tribe] requests tracts with improvements be included in the offer set and that the [Participating Tribe] will afford landowners occupying any tracts acquired via the Buy-Back Program the opportunity for a lease if one is not in place already."
- vi. To support collaborative outreach and information sharing, the Participating Tribe should share copies of developed outreach materials and advertisements funded by this Cooperative Agreement, with the Buy-Back Program. This may include, but is not limited to, newspaper advertisements, radio advertisements, television advertisements, flyers, brochures, postcards and letters to Owners. Outreach materials and advertisements shared by the Participating Tribe will be provided to the Trust Beneficiary Call Center to ensure that Owners receive the most current and accurate information on implementation of the Buy-Back Program on the Reservation.
- vii. [IF APPLICABLE] The Participating Tribe will cooperate with the Buy-Back Program and provide any information in its possession necessary to assist with the environmental due diligence reviews required (pursuant to Department of the Interior Manual Part 602, Chapter 2 *Real Property Pre-Acquisition Environmental Site Assessments*, and the American Society for Testing and Materials E1528-14 *Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process*) for the acquisition of restricted fee interests. The Program may exclude restricted fee interests if the review cannot be completed in a timely or cost effective manner, or if the results of the review reveal potential environmental concerns.

V. OBJECTIVES

The objectives of this Cooperative Agreement are for the Participating Tribe to:

- a. Conduct pre-offer and post-offer outreach, in part to help ensure informed decision-making by Owners;
- b. Identify interested sellers;
- c. Notify Owners, including Whereabouts Unknown Owners, of the opportunity to sell; and
- d. Identify addresses and updated Owner contact information.

The Participating Tribe will direct Owners to the Trust Beneficiary Call Center, the Office of the Special Trustee of American Indians, and/or utilize the appropriate Buy-Back Program-provided forms, to identify willing sellers and update Owner contact information.

[INSERT ADDITIONAL OBJECTIVES, AS APPLICABLE]

VI. PERIOD OF PERFORMANCE

- a. This Cooperative Agreement becomes effective on the date of signature by the Buy-Back Program Director and will remain in effect, subject to the terms and conditions of this Cooperative Agreement and the funding made available herein ("Cooperative Agreement Award"), until _____, 20____ [DATE] or until thirty calendar days after the Buy-Back Program has provided written notice to the Participating Tribe that available resources have been exhausted, whichever is less.
- b. The Parties may extend this period of performance by mutual agreement. The Participating Tribe shall submit any requests to extend the period of performance of this Cooperative Agreement no later than sixty days before the period of performance end date listed above. Requests shall include a justification for the extension and detail any proposed changes to the scope or budget of the Cooperative Agreement Award.
- c. The Participating Tribe may only incur costs pursuant to this Cooperative Agreement during the period of performance unless pre-award costs have been approved, in writing, by the Buy-Back Program.

VII. TRIBAL PRIORITIES AND ACQUISITION OF FRACTIONAL INTERESTS

The Participating Tribe may identify those Fractional Interests within the Reservation that are priorities for potential purchase by providing the Buy-Back Program with a priority list ("Tribal Priority Fractional Interests").

- a. The Buy-Back Program will select tracts and interests to receive offers consistent with the Buy-Back Program's priorities and informed by the Tribal Priority Fractional Interests. The Participating Tribe recognizes that the Owners' decision to sell is voluntary and that the Buy-Back Program cannot guarantee that the Tribal Priority Fractional Interests or other interests will be acquired, in part because some Fractional Interests or Fractionated Tracts may be ineligible for acquisition by the Buy-Back Program (e.g., some tracts are currently unmappable or require resolution of one or more mapping process codes) as described in the Status Report.
- b. The Participating Tribe recognizes and agrees that the Buy-Back Program may acquire any other Fractional Interests on the Reservation. If there are any particular Fractional Interests that the Participating Tribe would like to exclude from the Buy-Back Program, it must specifically identify such interests by providing a written notice to the Buy-Back Program, within 30 days after the effective date of this Cooperative Agreement, to the Buy-Back Program for its consideration.

VIII. KEY OFFICIALS

- a. TRIBAL CONTACT. The Participating Tribe hereby designates _____ [CONTACT INFORMATION] as its Point of Contact for all matters related to this Cooperative Agreement. The Participating Tribe shall notify the Department's Point of Contact (as identified below) in writing of any change in its Point of Contact.
- b. BUY-BACK PROGRAM TRIBAL RELATIONS ADVISOR. The Buy-Back Director hereby designates _____ [CONTACT INFORMATION] as the Point of Contact for all programmatic matters related to this Cooperative Agreement. The Buy-Back Program shall notify the Tribe's Point of Contact in writing of any change in its Point of Contact.
- c. BUY-BACK PROGRAM DIRECTOR. The Director of the Buy-Back Program is the only official with legal delegated authority to make decisions regarding the Buy-Back Program. The Director's responsibilities include, but are not limited to, the following:
 - i. Obligate the Buy-Back Program to expend funds, approve pre-award costs, or change the funding level of this Cooperative Agreement;
 - ii. Approve, in writing, any proposed changes to the scope of the Cooperative Agreement submitted by the Participating Tribe;
 - iii. Approve, in writing, any change in the period of performance of this Cooperative Agreement;
 - iv. Approve, in writing, changes in any of the expressed terms, conditions, or specifications of this Cooperative Agreement; and
 - v. Be responsible for the overall administration and management of this Cooperative Agreement for the Department.
- d. BUY BACK PROGRAM COOPERATIVE AGREEMENT SPECIALIST. The Buy-Back Program's Cooperative Agreement Specialists have been delegated authority by the Buy-Back Director to perform all financial and administrative functions related to this Cooperative Agreement.

IX. FUNDING AND PAYMENT

- a. The Buy-Back Program will make available up to \$ _____ [AMOUNT] of the Fund to the Participating Tribe to cover allowable costs incurred to implement the Buy-Back Program as set forth in this Cooperative Agreement and summarized below:

[INSERT FUNDING SUMMARY TABLE]

- i. All costs incurred for the performance of this Cooperative Agreement must be allowable, allocable and reasonable pursuant to 2 CFR § 200 Subpart E – Cost Principles. In addition, the Participating Tribe must manage administrative

expenses in the most cost-efficient manner possible, in accordance with ILCA, 25 U.S.C. § 2212(b)(4).

- ii. In no event shall costs be incurred in performance of this Cooperative Agreement in excess of the awarded amount. Nor shall the Participating Tribe use any of the funding made available by this Cooperative Agreement to pay for, or support any, bonus or other compensation to landowners.
- b. The Participating Tribe must seek pre-approval from the Buy-Back Program for any costs not detailed in the approved documents; otherwise, the Buy-Back Program may recoup advanced funds or refuse payment for that expense.
- c. The Buy-Back Program agrees to reimburse any pre-award costs that the Buy-Back Program has approved in writing.
- d. The Participating Tribe must enroll in, and utilize, the Department of Treasury's Automated Standard Application for Payments ("ASAP") system to request payments under this Cooperative Agreement. If not already enrolled under the Department of Interior Financial Management Service Office's agency location code, (14010001), the Participating Tribe must successfully enroll with ASAP in order to receive Cooperative Agreement funding.
- e. The Participating Tribe may request payments in ASAP on an as-needed basis; however, pursuant to 2 C.F.R. § 200.305, its methods and procedures for payments must minimize the time elapsing between the transfer of funds from ASAP and their disbursement by the Participating Tribe.
- f. Pursuant to 2 C.F.R. § 200.305, the Participating Tribe shall be paid in advance; provided, that it maintains or demonstrates the willingness and ability to maintain procedures minimizing the time elapsing between the transfer of funds from ASAP and their disbursement by the Participating Tribe.

X. PERFORMANCE REPORTS

- a. The Participating Tribe must submit quarterly performance reports to the Buy-Back Program pursuant to 2 C.F.R. § 200.328. The quarterly reports shall, at a minimum, include the following:
 - i. A comparison of actual accomplishments to the objectives (see Section V) established for the period, including a computation of the cost per unit of output where the output of the project can be quantified;
 - ii. The reasons for slippage if established objectives were not met; and
 - iii. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

- iv. Detailed performance information on the outreach activities conducted, such as the number, and a summary of:

1. Outreach events held.
2. Outreach event attendees.
3. Individual Owner name and address updates made.
4. Calls made to Owners.
5. Notary actions completed.
6. Media events and activities held.
7. Whereabouts Unknown identified.
8. Willing sellers identified.
9. Mailings (e.g., postcards) sent.
10. Outreach materials, such as AIPRA brochures, distributed.

The Buy-Back Program may provide templates to facilitate performance reporting.

- b. Pursuant to 2 C.F.R. § 200.328, if events occur between scheduled performance reporting dates which have significant impact upon the project, the Participating Tribe must inform the Buy-Back Program as soon as the following types of conditions become known: (1) problems, delays, or adverse conditions that will materially impair the ability to meet the objective of the project; (2) favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned. This disclosure must include a statement of the action taken, or contemplated, and steps necessary to resolve the situation.
- c. Quarterly performance reports are due for the following reporting periods:
- i. Beginning October 1 and ending December 31;
 - ii. Beginning January 1 and ending March 31;
 - iii. Beginning April 1 and ending June 30; and
 - iv. Beginning July 1 and ending September 30.
- d. Performance reports are due within 30 calendar days of the end of the reporting period.
- e. The first performance report is due 30 calendar days after the end of the reporting period in which this Cooperative Agreement becomes effective.
- f. A final performance report is required within 90 calendar days after the expiration or termination of the Cooperative Agreement.

XI. FINANCIAL REPORTS

- a. In addition to the required performance reports, the Participating Tribe must submit quarterly financial reports utilizing the SF-425 Federal Financial Report to the Buy-Back Program pursuant to 2 C.F.R. § 200.327.
- b. Reports are due for the following reporting periods:
 - i. Beginning October 1 and ending December 31;
 - ii. Beginning January 1 and ending March 31;
 - iii. Beginning April 1 and ending June 30; and
 - iv. Beginning July 1 and ending September 30.
- c. SF-425 Federal Financial Reports are due within 30 calendar days of the end of each reporting period.
- d. The first SF-425 Federal Financial Report is due 30 calendar days after the end of the period in which the Cooperative Agreement becomes effective.
- e. A final SF-425 Federal Financial Report is required within 90 calendar days after the expiration or termination of the Cooperative Agreement.

XII. REMEDIES FOR NONCOMPLIANCE

Pursuant to 2 C.F.R. § 200.338, if the Participating Tribe fails to comply with any term of this Cooperative Agreement, whether stated in a federal statute or regulation, an assurance, recital, or elsewhere, the Buy-Back Program may take one or more of the following actions, as appropriate in the circumstances:

- a. Temporarily withhold cash payments pending correction of the deficiency by the Participating Tribe;
- b. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
- c. Wholly or partly suspend or terminate the current Cooperative Agreement Award;
- d. Initiate suspension or debarment proceedings;
- e. Withhold further awards for the program; and/or
- f. Take other remedies that may be legally available.

Pursuant to 2 C.F.R. § 200.341, upon taking any remedy for non-compliance, the Participating Tribe will have an opportunity for such hearing, appeal, or other administrative proceeding to which the Participating Tribe is entitled under any statute or regulation applicable to the action involved.

XIII. SEPARATION OF FUNDS/ACTIVITIES

The Participating Tribe must be able to account for the receipt, obligation and expenditure of funding provided under this Cooperative Agreement pursuant to 2 C.F.R. § 200.305. The Participating Tribe recognizes and agrees that it must continue to fulfill the terms of any contract or compact operated by the Participating Tribe in accordance with the ISDEAA and that no funds awarded pursuant to this Cooperative Agreement may be reprogrammed or utilized to fulfill the terms of those contracts or compacts.

XIV. RETENTION OF FIDUCIARY TRUST RECORDS

The Participating Tribe agrees to preserve, protect, and manage all records created and/or maintained by the Participating Tribe during its participation in the Buy-Back Program. The Participating Tribe agrees to make available to the Department all records pertaining to the administration of the Buy Back Program. Any records relating to the Buy Back Program held by the Department will be considered Indian Fiduciary Trust Records and will be maintained as defined by Department of the Interior Manual Part 303 Chapter 6, which is based on U.S.C. 44 Chapter 31. The Participating Tribe agrees to store and permanently retain all records relating to the Buy Back Program, active and inactive, at the Participating Tribe's expense and with full unlimited access thereto by the Department, or allow such records to be removed and stored at the applicable office at the Department of the Interior for active records, and then transferred to the American Indian Records Repository in Lenexa, Kansas for inactive records.

XV. MODIFICATION AND TERMINATION

- a. Pursuant to 2 C.F.R. § 200.308, certain types of post-award programmatic and budget changes require prior written approval from the Buy-Back Program Director.
- b. The terms of this Cooperative Agreement may be modified only by written agreement of the Parties through their duly-authorized representatives. Notwithstanding the foregoing, the Buy-Back Program may make changes to this Cooperative Agreement by means of a unilateral modification to address administrative matters, such as changes in address, no-cost time extensions at the Participating Tribe's request, the addition of funding at the Participating Tribe's request, or de-obligation of excess funds during closeout of the Cooperative Agreement, provided that no unilateral modification will, in any manner, change any material term of the Cooperative Agreement.
- c. Pursuant to 2 C.F.R. § 200.339, either Party may terminate the Cooperative Agreement prior to the period of performance end date listed in Section VI.
- d. Pursuant to 2 C.F.R. § 200.343, the Buy-Back Program will close out the Cooperative Agreement when it determines that all applicable administrative actions and all required work has been completed.

XVI. NO EFFECT ON SOVEREIGN IMMUNITY

Nothing in this Cooperative Agreement shall be construed to limit, alter, waive, or modify the legal rights, interests, benefits, privileges, or immunities possessed by either Party.

XVII. AGENCY AND TORT LIABILITY

The Participating Tribe is not an agent or representative of the United States, and neither the Buy-Back Program nor the Participating Tribe will represent the Participating Tribe as such to third parties. Buy-Back Program employees are not agents of the Participating Tribe and will not act on behalf of the Participating Tribe. Employees of the Participating Tribe are not agents of the Buy-Back Program and will not act on behalf of the Buy-Back Program. Members and employees of the Participating Tribe are not considered U.S. Government employees, officers, or agents and are not covered under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., or the Federal Employee Compensation Act, 5 U.S.C. 8101 et seq.

XVIII. APPLICABLE REGULATIONS AND OTHER PROVISIONS

- a. 2 C.F.R. § 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" is hereby incorporated by reference and made a part of this Cooperative Agreement.
- b. **Departmental Standard Terms and Conditions.** The following Departmental standard terms and conditions, to the extent that they are applicable to the Participating Tribe, are hereby incorporated by reference and made a part of this Cooperative Agreement:
 - i. 2 C.F.R. Part 1400 - Nonprocurement Debarment and Suspension
 - ii. 2 C.F.R. Part 25 - Appendix A - Central Contractor Registration and Data Universal Numbering System (Attachment A).
 - iii. 2 C.F.R. Part 170 - Appendix B - Reporting Subawards and Executive Compensation Information (Attachment B).
 - iv. 2 C.F.R. Part 175 - Trafficking Victims Protection Act of 2000 (Attachment C)
 - v. 2 C.F.R. Part 1401 - Requirements for a Drug-Free Workplace (Financial Assistance)
 - vi. 43 C.F.R. Part 18 - New Restrictions on Lobbying
 - vii. Recipient Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights.
 1. This Cooperative Agreement Award and employees working on this Cooperative Agreement award will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712.

2. The Participating Tribe shall inform its employees in writing, in the predominant language of the workplace, of employee whistleblower rights and protections under 41 U.S.C. 4712.
3. The Participating Tribe shall insert the substance of this clause, including this paragraph (3) in all subawards or subcontracts over the simplified acquisition threshold. 42 C.F.R. § 52.203-17.

viii. **Conflict of Interest.** The Participating Tribe must establish safeguards to prohibit its employees and subrecipients from using their positions for purposes that constitute or present the appearance of a personal or organizational conflict of interest. The Participating Tribe is responsible for notifying the Buy-Back Program in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the Participating Tribe or its employees in a position of conflict, real or apparent, between their responsibilities under the Cooperative Agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision making affecting the Cooperative Agreement that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Participating Tribe and/or the Participating Tribe's employees and Sub-recipients in the matter. The Buy-Back Program Director and the servicing Department of the Interior Ethics Counselor will determine if a conflict of interest exists. If a conflict of interest exists, the Buy-Back Program Director will determine whether a mitigation plan is feasible. Mitigation plans must be approved by the Buy-Back Program Director in writing. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the Cooperative Agreement Award. Failure to make required disclosures may result in any of the remedies described in 2 C.F.R. § 200.338, *Remedies for Noncompliance*, including suspension or debarment (see also 2 C.F.R. Part 180).

c. Other Provisions

- i. **Privacy Act.** The Privacy Act, 5 U.S.C. § 552a, ("the Act") applies to all activities under this Cooperative Agreement, and the Participating Tribe agrees to protect personally- identifiable information and other privileged and confidential information as defined under the Act and other applicable federal laws. In order to receive access to personally identifiable information, the Participating Tribe's staff must sign a non-disclosure agreement and take Privacy Act and information security training.
- ii. **Non-Exclusive Agreement.** This Cooperative Agreement in no way restricts the Buy-Back Program from entering into similar agreements, or participating in

similar activities or arrangements, with other tribes, public or private agencies, organizations, or individuals.

- iii. **Survival.** Any and all provisions, which, by their nature, are reasonably expected to be performed after the expiration or termination of this Cooperative Agreement, shall survive and be enforceable after the expiration or termination of this Cooperative Agreement. Any and all liabilities, actual or contingent, that have arisen during the term of, and in connection with, this Cooperative Agreement shall survive the expiration or termination of this Cooperative Agreement.
- iv. **Partial Invalidity.** If any provision of this Cooperative Agreement, or the application thereof, to any party or circumstance shall, to any extent, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Cooperative Agreement, shall not be affected thereby, and each provision of this Cooperative Agreement shall be valid and be enforced to the fullest extent permitted by law.
- v. **No Employment Relationship.** This Cooperative Agreement is not intended, and shall not be construed, to create an employment relationship between the Department or any bureau thereof and the Participating Tribe or its members, employees, or contractors. No Participating Tribe or its member, employee, or contractor shall perform any function or make any decision reserved by law or policy to the federal government.
- vi. **No Third-Party Rights.** This Cooperative Agreement creates enforceable obligations between only the Department and the Participating Tribe. Except as expressly provided herein, it is not intended, nor shall it be construed, to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Cooperative Agreement.
- vii. **Captions and Headings.** The captions, headings, article numbers and paragraph numbers appearing in this Cooperative Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Cooperative Agreement or in any way affecting this Cooperative Agreement.
- viii. **Conflict.** In the event of a conflict between any information contained in the Cooperative Agreement Application and the Cooperative Agreement, the Cooperative Agreement and the Status Report shall prevail.

XIX. EXECUTION OF COOPERATIVE AGREEMENT

Authorized Tribal Official:

Name

Title

Signature

Date

Land Buy-Back Program for Tribal Nations:

John H. McClanahan

Date

Director

Land Buy-Back Program for Tribal Nations

U.S. Department of the Interior

ATTACHMENT A (Departmental Standard Terms and Conditions)

2 C.F.R. Part 25 – Appendix A - Central Contractor Registration and Data Universal Numbering System

The Central Contractor Registration (CCR) has been migrated to the System for Award Management (SAM). Recipients must continue to comply with the CCR requirements below by maintaining current registration within www.SAM.gov.

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions

For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 C.F.R. Part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;

- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. *Subaward:*

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. 11.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

ATTACHMENT B (Departmental Standard Terms and Conditions)

2 C.F.R. Part 170 - REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

A. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph D. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph E. of this award term).
2. **Where and when to report.**
 - i. You must report each obligating action described in paragraph A.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action that the submission instructions posted at <https://www.sam.gov> specify.

B. Reporting Total Compensation of Recipient Executives.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph A.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

C. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

D. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

E. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term includes your procurement of property and services needed to carry out the project or program. The term does not include procurement

of incidental property and services needed to carry out the award project or program.

- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites, or property) for the executive exceeds \$10,000.

ATTACHMENT C (Departmental Standard Terms and Conditions)

2 C.F.R. Part 175 Trafficking Victims Protection Act of 2000

This term of award is pursuant to paragraph (g) of section 106 of the Trafficking Victims Protections Act of 2000, as amended (22 USC 7104(g)).

(a) Provisions applicable to a recipient that is a private entity.

(1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

(i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

(ii) Procure a commercial sex act during the period of time that the award is in effect; or

(iii) Use forced labor in the performance of the award or subawards under the award.

(2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

(i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or

(ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either

(A) Associated with performance under this award; or

(B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. part 1400.

(b) Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

(1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

(2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

- (i) Associated with performance under this award; or
- (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 1400.

(c) *Provisions applicable to any recipient.*

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(d) *Definitions.* For purposes of this award term:

- (1) "Employee" means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) "Private entity:"
 - (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. 175.25.

(ii) Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. 175.25(b).

(B) A for-profit organization.

(4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).